

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ERIC HANTMAN, ET AL., .
 .
Plaintiffs, . Case No. 18-cv-11047 (KM)
 .
VS. .
 . Newark, New Jersey
GARTH ANDRE NAAR, ET AL., . June 5, 2019
 .
Defendants. .
 .

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JAMES B. CLARK
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 (Commencement of proceedings at 02:53:56 P.M.)

2

3 THE COURT: Okay. We're on the record in
4 Hantman, et al. vs. Naar, et al. at civil action
5 number 18-11047(KM). And it's about five minutes
6 before 3:00 on the afternoon of June 5th, 2019. Can I
7 have appearances of counsel, please?

8 MR. COHEN: Good afternoon, Your Honor.
9 Jonathan Cohen; Kishner, Miller, Himes, for the
10 plaintiffs.

11 THE COURT: Good afternoon.

12 MR. WEISBROT: Ari Weisbrot on behalf of the
13 Avatar defendants, which includes Garth Naar. Good
14 afternoon, Your Honor.

15 THE COURT: Good afternoon.

16 MR. KLEIN: Good afternoon, Judge. David
17 Klein from Brach Eichler on behalf of Silvan.

18 THE COURT: Good afternoon.

19 MR. FINESTEIN: Good afternoon, Your Honor.
20 Russell Finestein of Finestein Malloy, also for --
21 counsel for Silvan.

22 THE COURT: Good afternoon.

23 MS. ROSENBLOOM: Your Honor, Betsy Rosenbloom,
24 Williams, Caliri, Miller and Otley on behalf of Silvan
25 (indiscernible).

1 THE COURT: Do we each have clients here? I
2 mean, you can bring your clients up because I'm going
3 to have a few -- I'm going to have a few questions for
4 them as -- as we --

5 MR. KLEIN: My client's here, Judge.

6 (Brief Pause. Indiscernible speaking.)

7 THE COURT: Why don't we introduce -- why
8 don't we introduce our clients?

9 MR. COHEN: Your Honor, I have Mr. Eric
10 Hantman here for the plaintiffs.

11 THE COURT: Okay.

12 MR. WEISBROT: Your Honor, Garth Naar is here
13 on behalf of himself and on behalf of (indiscernible).

14 THE COURT: All right. Good afternoon.

15 MR. KLEIN: Good afternoon, Judge. This is
16 Alex Huang on behalf of Silvan.

17 THE COURT: Alex?

18 MR. KLEIN: H-U-A-N-G.

19 THE COURT: Okay. And that's on behalf of all
20 of the Silvan defendants, or --

21 MR. KLEIN: Well, all of the Silvan
22 defendants. The title companies are here representing
23 Silvan and then they have their own contribution to
24 (indiscernible).

25 THE COURT: All right. And I'll -- I'll

1 direct whatever questions I might have for counsel to
2 -- for the clients to -- just to counsel and that
3 should be fine.

4 All right. Well, Mr. Cohen, I understand that
5 we have reached a settlement in this case. Is that
6 right?

7 MR. COHEN: Yes, Your Honor, subject to
8 execution of a formal settlement agreement. We have --

9 THE COURT: And it -- it would need to be
10 executed -- you say this is a shareholder derivative
11 suit and --

12 MR. COHEN: That's correct.

13 THE COURT: -- under the Rules, you -- you
14 feel that you -- you need the formal approval of the
15 district judge. So we're settling it. We're putting
16 the terms on the record and the -- the formal approval
17 would be sought after today. Is that right?

18 MR. COHEN: Correct. We're also seeking -- so
19 -- ordering the settlement agreement.

20 THE COURT: All right. Well why don't you,
21 then, if you would, place the terms of the settlement
22 agreement on the record?

23 MR. COHEN: Sure, Your Honor. The agreement
24 in principal is for the Avatar defendants and the
25 plaintiffs, for control of two properties; 57 Mountain

1 Avenue and 375 North 10th to be sold as follows. 90
2 days from settlement, Mr. Naar will have authority to
3 market and sell the properties with veto rights by Mr.
4 Hantman as representative for the plaintiffs.

5 After -- after that 90-day period, Mr. Hantman
6 would step in to control and attempt to sell the
7 properties with the understanding that -- that any veto
8 would only -- would not exist for Mr. Naar as to the --
9 the price of the pro -- the mou -- Mountain Avenue
10 property and that the floor would be 1.4 million.

11 At settlement, mis -- the Avatar defendants
12 will provide \$85,000 in cash upon settlement coming
13 from -- 25,000 coming from the Mountain Avenue account
14 and 60,000 coming from Mr. Naar's Morgan Stanley
15 account.

16 Next, the Avatar defendants, Mr. Naar and
17 Avatar Management in their names will agree to a
18 consent judgment for a total amount of 1.55 million
19 with the understanding that the properties and the net
20 sale proceeds from the properties I just mentioned,
21 Mountain Avenue and three -- 375 North 10th, any
22 proceeds from there will be deducted and credited
23 against that top consent judgment amount.

24 Additionally, the Avatar defendants have
25 agreed to make payments of \$10,000 per month to the

1 plaintiffs and also agree to, within each year until
2 full payment is made, to -- agree to pay \$350,000 of
3 payments.

4 If they've satisfied those obligations, then
5 the plaintiffs will stay enforcement of the consent
6 judgement. Additionally, as I previously -- previously
7 stated, Your Honor, we will be seeking for the
8 settlement agreement to be so ordered and we have also
9 agreed that Mr. Naar will allocute to the financial
10 statement and backup documents that he has provided to
11 date.

12 The last point that I want to make on the
13 record is that --

14 THE COURT: And how is that allocution going
15 to take place?

16 MR. COHEN: I -- I would imagine --

17 THE COURT: By affidavit, or --

18 MR. COHEN: Open record in front of Judge
19 McNulty was the way I had envisioned it.

20 THE COURT: All right.

21 MR. COHEN: Based upon the representations and
22 the documents that have been provided to -- to date.

23 THE COURT: Okay. Continue.

24 MR. COHEN: And Silvan will be providing
25 \$50,000. We had -- just had a discussion that that

1 \$50,000 will be paid into an escrow account and Mr.
2 Klein, who's counsel for Silvan, for each of the two
3 loans that still need to be paid off to Silvan,
4 Catherine and Schofield (phonetic), 25,000 which will
5 be paid to the plaintiffs in advance of the -- of the
6 closings on both of those transactions.

7 THE COURT: All right. Mr. Weisbrot, anything
8 to add?

9 MR. WEISBROT: Just a couple of quick things.
10 First of all, just to clarify, this is not in any way
11 an agreement in principal. This is an agreement that
12 even though it was subject to a written settlement
13 agreement we would hope to be so ordered by Judge
14 McNulty, it is binding on all parties as of today. And
15 I suspect the Court is going to at least ask each of
16 the parties themselves to acknowledge their
17 understanding that this settlement is binding on
18 (indiscernible) today.

19 I was -- I know --

20 THE COURT: Assuming -- you know, absolutely.
21 I agree. You know, if for some reason, Judge McNulty
22 decided not to approve, I guess that would change the
23 game, but --

24 MR. WEISBROT: Right, but what I meant was,
25 you know, the settlement isn't contingent on us coming

1 up with an agreement, although I suppose being
2 contingent --

3 THE COURT: That's my understanding. Yes.

4 MR. WEISBROT: Okay. In any event, I -- I
5 just want to make sure that what counsel said was
6 clear. This veto authority on the sales with respect
7 to when Mr. Hantman is -- is trying to market and sell
8 it is -- the veto is for anything below \$1.4 million.
9 Anything above it is not subject to a veto. I'm not
10 (indiscernible), but all of the actions of both Mr.
11 Hantman and Mr. Naar during their time --

12 THE COURT: We're talking approval, right?
13 When you --

14 MR. WEISBROT: Right.

15 THE COURT: -- say veto, you're saying --

16 MR. WEISBROT: Everything has to be done on
17 --

18 THE COURT: Right.

19 MR. WEISBROT: -- contemporaneous notice of
20 whatever offers or whatever efforts are being made. To
21 clarify the allocution, I'm not sure that really is the
22 word that I would have used. He -- because it implies
23 sort of a -- what I think counsel is asking for is that
24 he acknowledge under oath that the financial
25 disclosures he gave were accurate as opposed to going

1 through all the (indiscernible). Is that --

2 MR. COHEN: That's correct.

3 THE COURT: Is that correct, mis -- that's
4 correct, Mr. Cohen?

5 MR. WEISBROT: And finally, Your --

6 MR. COHEN: That's correct.

7 THE COURT: Okay.

8 MR. WEISBROT: And then finally, obviously
9 full releases for all parties, cross releases in favor
10 of everybody on every side. Other than that, I'm in
11 agreement.

12 THE COURT: All right.

13 MR. COHEN: I -- I agree with that as well.

14 THE COURT: Any -- anything to add by any of
15 the Silvan attorneys?

16 MR. KLEIN: Yes, Judge. The total
17 contribution of Silvan as stated is \$50,000, which will
18 be divided as between Silvan and its title insurers,
19 and that will be memorialized as -- as between us. The
20 releases, Mr. Weisbrot has already spoken to. In terms
21 of the two remaining properties that are the subject of
22 the suit --

23 THE COURT: Mr. Klein, do you think or do you
24 want to give us the breakdown of the numbers between
25 the three of you right now, or is that not necessary?

1 MR. KLEIN: No. I don't think that's
2 necessary judge. It will be --

3 THE COURT: All right.

4 MR. KLEIN: It will be memorialized between us
5 and I think that that's sufficient.

6 THE COURT: Okay.

7 MR. KLEIN: On the remaining two properties
8 that haven't been sold, which are the Schofield and
9 Catherine properties, if the properties do not close by
10 August 15th of this year, the default rate of interest
11 will go back to 22 percent and legal fees from that day
12 forward will be added to the payoff amounts. Other
13 than that, those are the only other --

14 THE COURT: Conditions?

15 MR. KLEIN: -- issues that I wanted to
16 address.

17 THE COURT: All right. Mr. Finestein, Ms.
18 Rosenbloom, anything to add?

19 MR. FINESTEIN: No, Your Honor.

20 MS. ROSENBLUM: No, Your Honor.

21 THE COURT: All right. Thank you. All right.
22 I do --

23 MR. WEISBROT: Judge?

24 THE COURT: Yes.

25 MR. WEISBROT: I'm sorry. Just one more

1 thing. I assume these -- these things are -- goes
2 without saying, but I just want to make clear, we would
3 also request that the settlement agreement include non-
4 disparaging and confidentiality clauses. A
5 confidentiality clause prevents the -- the subjects --
6 I guess -- it's a derivative action, so to the extent
7 necessary that it's required disclosure by law. But
8 other than that, I don't think anybody wants anybody
9 discussing this outside of (indiscernible).

10 MR. KLEIN: Your Honor, I neglected to mention
11 and I don't think anybody said it, but the action will
12 be dismissed with prejudice and I don't think that the
13 -- that we've had a date for that. I assume upon
14 execution of the settlement agreement.

15 MR. COHEN: Okay. We have the execution of
16 the settlement agreement. We have to have it approved
17 and so ordered by Judge McNulty. I'm -- yes, I was
18 contemplating dismissal --

19 THE COURT: You'll do that with all due
20 dispatch. Right?

21 MR. COHEN: Correct. Right. And just in --
22 with respect to the confidentiality, I'd add the caveat
23 that so long as everyone -- so long as there's been no
24 breach by any of the parties under the settlement
25 agreement. If one of the parties breaches, they

1 breach, and then --

2 THE COURT: Well --

3 MR. WEISBROT: I'm not going to -- I -- I
4 don't know that that's standard. I think that
5 confidentiality is confidentiality. If someone
6 breaches, you have a (indiscernible) clause. But as
7 long as there's a confidentiality clause, I don't care
8 how you (indiscernible).

9 THE COURT: All right. Yeah. I mean, there's
10 obviously limitations. Confidentiality clauses are
11 becoming less and less popular with courts and state
12 legislatures. So -- and it being a derivative suit, I
13 -- you know, we -- we can -- you can only agree to make
14 it confidential to -- to a certain degree. And if you
15 all can agree to keep it confidential amongst
16 yourselves, that's -- that's fine. Yes.

17 MR. WEISBROT: Obviously, it's got to be
18 disclosed to the (indiscernible).

19 MR. COHEN: We haven't discussed this issue at
20 all, at any point. So I really haven't thought through
21 --

22 MR. WEISBROT: It's going to be a --

23 MR. COHEN: I don't have an issue with that.
24 I'm just saying I haven't thought through the issues.

25 MR. WEISBROT: With all the carve-out --

1 sorry. We understand the (indiscernible). By the way,
2 I -- I just want to say, I -- we don't agree that this
3 is a derivative. I mean, that doesn't affect anything.

4 THE COURT: Right.

5 MR. WEISBROT: But I know the Court said it, I
6 know Jonathan just said it. We don't agree that's what
7 this is, but it has no impact on anything we said here
8 today.

9 THE COURT: Okay. And I -- I'm not really,
10 you know, voicing my opinion that it is or that it
11 isn't, either. I'm just repeating that Mr. Cohen has
12 said that and that he's going to seek the approval from
13 Judge McNulty. And it sounds like everybody else, if
14 they think approval is necessary or not necessary, you
15 don't feel strongly either way. Right?

16 MR. WEISBROT: No. I -- I -- it doesn't
17 change anything that was --

18 THE COURT: Right. Okay. All right. Let me
19 ask -- I have a few questions for the -- for the
20 principals. Mr. Hantman, can you take the -- push the
21 microphone so Mr. Hantman can speak into it. You can
22 remain seated, Mr. Hantman. That's fine. You -- you
23 can remain seated. Did you terms of the settlement as
24 stated by the attorneys?

25 MR. HANTMAN: Yes, Your Honor.

1 THE COURT: And do you understand the terms of
2 the settlement?

3 MR. HANTMAN: Yes, Your Honor.

4 THE COURT: Do you have any questions for your
5 attorney about it?

6 MR. HANTMAN: No, Your Honor.

7 THE COURT: Did you have adequate opportunity
8 to speak to your attorney regarding the settlement?

9 MR. HANTMAN: Yes, Your Honor.

10 THE COURT: Did anyone coerce, threaten, or
11 pressure you into agreeing to the settlement?

12 MR. HANTMAN: No, Your Honor.

13 THE COURT: Has anyone made any promises to
14 you other than the terms of the settlement as stated on
15 the record by the attorneys?

16 MR. HANTMAN: No, Your Honor.

17 THE COURT: And do you understand that instead
18 of agreeing to the settlement, you have the right to
19 proceed to trial, but that by agreeing to the
20 settlement, you're waiving that right?

21 MR. HANTMAN: Yes, Your Honor.

22 THE COURT: And do you understand that the
23 settlement is binding upon you?

24 MR. HANTMAN: Yes, Your Honor.

25 THE COURT: And do you consent to the

1 settlement knowingly, freely, and voluntarily?

2 MR. HANTMAN: Yes, Your Honor.

3 THE COURT: Are you satisfied with the
4 representation of your attorney?

5 MR. HANTMAN: Yes, Your Honor.

6 THE COURT: And have you taken any medications
7 or other substances or do you suffer from any mental
8 difficulties that would affect your ability to
9 understand this proceeding or agree to this settlement?

10 MR. HANTMAN: No, Your Honor.

11 THE COURT: All right. Mr. Naar, why don't you
12 sit up in front of that microphone so we can pick up
13 your voice. Did you hear the terms of the settlement
14 as stated by the attorneys?

15 MR. NAAR: I did, Your Honor.

16 THE COURT: Do you understand the terms of the
17 settlement?

18 MR. NAAR: Yes.

19 THE COURT: Now, do you have any questions for
20 your attorney about it?

21 MR. NAAR: Not at this time.

22 THE COURT: Did you have adequate opportunity
23 to speak to your attorney regarding the settlement?

24 MR. NAAR: I did.

25 THE COURT: Did anyone coerce, threaten, or

1 pressure you into agreeing to the settlement?

2 MR. NAAR: No, Your Honor.

3 THE COURT: Has anyone made any promises to
4 you other than the terms of the settlement as stated on
5 the record by the attorneys?

6 MR. NAAR: No, Your Honor.

7 THE COURT: Do you understand that instead of
8 agreeing to the settlement, you have the right to
9 proceed to trial but that by agreeing to the
10 settlement, you're waiving that right?

11 MR. NAAR: Yes.

12 THE COURT: Do you understand that the
13 settlement is binding upon you?

14 MR. NAAR: Yes.

15 THE COURT: Do you consent to this settlement
16 knowingly, freely, and voluntarily?

17 MR. NAAR: Yes. I do.

18 THE COURT: Are you satisfied with the
19 representation of your attorney?

20 MR. NAAR: I am.

21 THE COURT: Have you taken any medications or
22 other substances or do you suffer from any mental
23 difficulties that would affect your ability to
24 understand this proceeding or to agree to this
25 settlement?

1 MR. NAAR: I do not.

2 THE COURT: All right. Mr. Huang.

3 MR. HUANG: Yes.

4 THE COURT: Same questions. Do you - did you
5 hear the terms of the settlement as stated by the
6 attorneys?

7 MR. HUANG: Yes. I did.

8 THE COURT: Do you understand the terms of the
9 settlement?

10 MR. HUANG: Yes.

11 THE COURT: Do you have any questions for your
12 attorney about it?

13 MR. HUANG: No.

14 THE COURT: No?

15 MR. HUANG: I don't have any questions.

16 THE COURT: No? All right. Did you have
17 adequate opportunity to speak to your attorney
18 regarding the settlement?

19 MR. HUANG: Yes.

20 THE COURT: Did anyone coerce, threaten, or
21 pressure you into agreeing to the settlement?

22 MR. HUANG: No.

23 THE COURT: Has anyone made any promises to
24 you other than the terms of the settlement as stated on
25 the record by the attorneys?

1 MR. HUANG: No.

2 THE COURT: Do you understand that instead of
3 agreeing to the settlement, you have the right to
4 proceed to trial but that by agreeing to the
5 settlement, you're waiving that right?

6 MR. HUANG: Yes. I do understand.

7 THE COURT: Do you understand that the
8 settlement is binding upon your company?

9 MR. HUANG: Yes.

10 THE COURT: Do you consent to this settlement
11 on behalf of your company knowingly, freely, and
12 voluntarily?

13 MR. HUANG: Yes.

14 THE COURT: Are you satisfied with the
15 representation of your attorney?

16 MR. HUANG: Yes.

17 THE COURT: Have you taken any medications or
18 other substances or do you suffer from any mental
19 difficulties that would affect your ability to
20 understand this proceeding or agree to this settlement?

21 MR. HUANG: No.

22 THE COURT: All right. I just ask Ms.
23 Rosenbloom and -- and Mr. Finestein, you have conferred
24 with your clients re -- regarding the settlement?

25 MS. ROSENBLUM: Just a clarification, Your

1 Honor. Our client is Silvan, but (indiscernible).

2 THE COURT: All right.

3 MS. ROSENBLOOM: I have consulted with the
4 carrier as to our interests (indiscernible).

5 THE COURT: All right. And I -- I -- I simply
6 want the representation from you; we don't have a live
7 body here, but that your -- that your clients have been
8 apprised. They know the -- the -- the upsides of
9 settlement and the downsides of settlement and they've
10 agreed freely, voluntarily, and knowingly to the
11 settlement as the -- as the terms have been stated on
12 the record?

13 MS. ROSENBLOOM: The carrier is aware of the
14 (indiscernible) settlement of the case and are happy to
15 go forward.

16 THE COURT: All right. Mr. Finestein?

17 MR. FINESTEIN: Similarly, Your Honor. The
18 title companies that are involved are (indiscernible)
19 agreeable (indiscernible).

20 THE COURT: All right. Thank you. Counsel,
21 we've stated the terms of the settlement on the record.
22 You will reduce this to writing after this proceeding
23 as you so chose. The -- certainly, the transcript
24 could serve as the settlement if -- if everyone agrees.

25 Please understand that if there are

1 disagreements as to the agreement as it's reduced to
2 writing if that's what you so choose, the form but not
3 the underlying settlement may be discussed. And if the
4 parties cannot agree on the form, the Court will decide
5 it based upon the record of the proceedings today.

6 Now, I leave it to you, Mr. Cohen, to take
7 what necessary steps you feel -- what steps you feel
8 are necessary to get that approval from Judge McNulty.
9 And I think that that concludes our business. Do you
10 have anything further?

11 MR. COHEN: Nothing further, Your Honor.

12 THE COURT: Anything further --

13 MR. COHEN: I just want to state --

14 THE COURT: Anything further from any other
15 counsel?

16 MR. WEISBROT: No, Your Honor, except to thank
17 the Court.

18 MR. COHEN: We want to say thank you. Thank
19 you.

20 MR. KLEIN: We just wanted to thank Your Honor
21 for his tremendous efforts in putting together this
22 difficult settlement for us. Thank you.

23 THE COURT: Well, I -- I -- I thank you as
24 well, and I did want to tell your clients, I -- I
25 didn't have all of you back in the little room where,

1 you know, the little dungeon where we gather to try to
2 hammer out the terms of the settlement. Had it been --
3 had it become necessary, I certainly would have grabbed
4 you and brought you back and, you know, tried to talk
5 turkey with you but you were all well-represented by
6 your counsel. They had your interests at heart. They
7 fought very hard for you. They're very skilled
8 attorneys who know this area of the law inside out.
9 They're to be commended for the jobs that they did on
10 -- on behalf of all of you. All right?

11 MR. WEISBROT: Thank you, Your Honor.

12 MR. COHEN: Thank you, Your Honor.

13 MR. WEISBROT: Thank you very much.

14 THE COURT: Thank you very much, folks.

15

16 (Conclusion of proceedings at 03:11:49 P.M.)

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3 I, SARAH L. FETZ, Transcriptionist, do hereby
4 certify that the pages contained herein constitute a
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13 I further certify that I am in no way related to
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08/15/19

18 Signature of Approved Transcriber
19 Sarah L. Fetz, AD/T #626

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